IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRL.A.No. 648 of 1999()

AGAINST THE JUDGMENT DT.16.11.98 IN SC.37/1998 of ASSISTANT SESSIONS COURT, ERNAKULAM .

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APPELLANT: COMPLAINANT

STATE OF KERALA REP.BY
PUBLIC PROSECUTOR HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR

RESPONDENTS: ACCUSED

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1. **LAIJU @ SHAJI, SON OF ANTONY, CHAKKOTTIL VEEDU, NEAR LITTLE FLOWER HOSPITAL, ANGAMALY, ALUVA.**

2. **GEORGE @ KIDNEY BIJU,, S/O. DEVASSY, KODUVALAPPIL VEEDU THATTAMPADY DESOM, CHERANELLOOR, KANAYANNUR.**

3. **JACOB MATHEW @ BEN, S/O. MATHEW, PUTHENPARAMBU VEEDU PEEDIKAPADY DESOM THRIKKODITHANAM, CHENGANASSERY.**

4. **RAJI @ SHAIJU, S/O.ABDUL AZIZ RAVUTHAR, KALAMIPUTHAN VEEDU NEAR HARIJAN COLONY AMBEDKAR, NEAR CHALAKKODA RAILWAY STATION, PUNALOOR PATHANAMTHTTA.**

5. **ASHRAF @ SHAJI, S/O. ABDUL KADAR, HOUSE NO.1/606,CHERAMPADAM, MOOLAMKODE DESOM, KIZHAKKANCHERI, ALATHUR, PALAKKAD.**

6. **NISSAMUDEEN @ NISSAN S/O. RASHEED,KALLUVETTANKUZHI VEEDU, ERNIKULAM ROAD, PUTHUSSERIMUKKU DESOM, CHIRAYANKEEZHU, TRIVANDRUM.**

7. **NADARSHA, S/O. KUNJUMARAKKAR, KANRUNIYIL VEEDU NEAR CHERUPUZHAM CHURCH, KAPPRASSERY DESOM, CHENGAMANDADU, ALUVA.**

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 648 of 1999

Dated this the 14th day of February, 2007

Judgment

This appeal is filed against the order of acquittal. Even though notice was ordered as early as on 17.11.1999, no effective steps were taken to serve notice and without serving the notice on the accused, order of acquittal cannot be reversed. Respondents are accused in Sessions Case No.37 of 1998 on the file of Assistant Sessions Court, Ernakulam. They were charge-sheeted for offences punishable under section 395 of the Indian Penal Code on the allegation that on 26.10.1996 at about 10.45 p.m. they have wrongfully restrained PW1 and committed robbery of certain gold ornaments and money from him by putting him in danger by pointing knife at his neck. Seven witnesses were examined on behalf of the prosecution. Even though the incident happened at 10.45 p.m. and PW1 and accused were strangers, no test identification parade was conducted for identification. PW1 is the owner of MOs 1 to 4 gold rings. There is no evidence to show that PW1 identified the accused. The case of the prosecution was that accused 1 to 3 were arrested on 2.11.1996 in connection with another offence. At that time, the accused gave confession statement and FIR was registered on that

basis and that caused the delay in registering the FIR. A4 to 7 were arrested subsequently. PW1 did not make any complaint in this case till registering the FIR and PW1 did not report regarding loss of any article. According to PW1, his friend one Morris came immediately after the incident and he told the matter and, in turn, Morris informed the matter to the police. As informed by Morris, PW1 went to the police station on 2.11.1996. Gold ornaments were allegedly lost on 26.10.1996. PW1 ought to have been informed the police earlier itself and there is unexplained delay in registering the FIR. According to PW1, the entire incident took over within two minutes, that too, in the shade of a tree in the night. Identification of the accused by PW1, that too, without any identification parade, was correctly doubted by the trial court and before the trial started the accused were shown by the Circle Inspector to PW1. Therefore, identification of the accused in the trial court is of no importance. Prosecution relied on the recovery of MOs 1 to 4 from PW3 on the basis of the alleged confession of the accused. According to PW3, he purchased only MOs 1 to 4 gold rings for Rs.4,000/-. But, it is admitted by PW6 that on 2.11.1996 another gold chain also has been received from PW3 which was also a stolen property and some of the accused involved in this case are accused

in that case also. But, according to PW3 he purchased only MOs 1 to 4. Fact of purchasing the other gold chain was supported by PW3. PW3 is a witness for the recovery of the stolen property and his evidence, as a whole, is not credible. Anyway, recovery of MOs 1 to 4 is not an admissible recovery under section 27 of the Evidence Act. There is no other evidence against the accused. From the totality of the circumstances, the trial court found that identity of the accused were not proved and prosecution was not able to prove that accused is guilty beyond reasonable doubt. I am of the opinion that the view of the trial court is a possible view and, therefore, the appeal against acquittal is dismissed.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl. A. No.648 of 1999

Judgment

14-2-2007